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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In re

94TH AND SHEA, L.L.C.,

Debtor.

Chapter 11 Proceeding

Case No. 2:10-BK-37387-SSC

**NOTICE OF NONCONSENT TO USE  
OF CASH COLLATERAL**

JPMCC 2007-CIBC19 Shea Boulevard, LLC (“JPMCC”), secured creditor and party in interest, by and through undersigned counsel, hereby gives notice to the debtor, 94th and Shea, L.L.C. (“94th and Shea” or “Debtor”), and any other parties in interest, of JPMCC’s nonconsent to use of its cash collateral pursuant to §§ 363(c)(2) and 552(b) of the Bankruptcy Code.

JPMCC bases its nonconsent to use of cash collateral pursuant to § 363(c)(2) on the following:

**The Loan Documents**

1. On or about May 17, 2007, 94th and Shea executed a “Promissory Note” (the “Note”) in favor of Canadian Imperial Bank of Commerce, New York Agency (“Original Lender”) through which 94th and Shea promised to pay Original Lender or its “heirs, executors, legal representatives, successors, successors in title, and assigns” the amount of \$21,000,000.00, together with interest and other amounts as set forth therein (the “Loan”), a true and correct copy of which is attached hereto as Exhibit A and

1 incorporated herein by this reference (as amended, modified, or supplemented, the  
2 “Note”).

3 2. On or about May 17, 2007, 94th and Shea, as “Grantor,” executed the Deed  
4 of Trust for the benefit of Original Lender to secure, among other things, payment of all of  
5 the indebtedness and performance of the obligations in connection with the Note and  
6 related loan documents. The Deed of Trust relates to certain real and personal property  
7 described more specifically therein as the “Property” (hereinafter, the “Property”) which  
8 relates to a commercial, entertainment, and retail center located at 9400 East Shea  
9 Boulevard, Scottsdale, Arizona 85260. In particular, the Property conveyed in the Deed  
10 of Trust includes, without limitation, 94th and Shea’s interest in the “Real Estate” as  
11 defined in the Deed of Trust and on the real property described in Exhibit A attached  
12 thereto, all “Improvements” related thereto, all “furniture, furnishings, fixtures, goods,  
13 equipment, inventory or personal property owned by Borrower” related to thereto, all  
14 easements and other property rights as defined therein, contract rights, all cash funds,  
15 deposit accounts and rights to cash defined as “Reserves” therein, the “Leases” and “Rents  
16 and Profits” from “Real Estate” or “Improvements” as defined therein, all “General  
17 Intangibles,” and any and all other rights and interests related to the Property as more  
18 specifically defined in the Deed of Trust (the “Collateral”). A true and correct copy of the  
19 Deed of Trust is attached hereto as Exhibit B and incorporated herein by this reference.

20 3. On or about May 17, 2007, 94th and Shea, as assignor, executed an  
21 “Assignment of Leases and Rents” (the “Assignment of L&R”) which “irrevocably,  
22 absolutely and unconditionally” assigned to Original Lender all of the current and future  
23 “Leases” and “Rents,” as defined therein, related to the Property. The Assignment of  
24 L&R was recorded with the Maricopa County Recorder on May 18, 2007, and rerecorded  
25 to correct the legal description of Parcel No. 2 on September 7, 2007. A true and correct  
26 copy of the recorded Assignment of L&R is attached hereto as Exhibit C and incorporated  
27 herein by this reference.

28 4. Original Lender and subsequent assignees perfected their security interest in

1 the Collateral by, among other things, recording a UCC-1 Financing Statement with the  
2 Arizona Secretary of State and the Maricopa County Recorder. True and correct copies of  
3 UCC Financing Statements and amendments thereto (the "Financing Statements") are  
4 attached hereto as Exhibit D and incorporated herein by this reference. The Note, Deed of  
5 Trust, Assignment of L&R, Financing Statements, and other documents identified therein  
6 as loan documents are hereinafter collectively referred to as the "Loan Documents."

7 **Assignment of the Loan Documents**

8 5. In accordance with Section 5.29 of the Deed of Trust, 94th and Shea  
9 acknowledged and agreed that the Loan would be subject to possible transfers and/or  
10 secondary market transactions.

11 6. On or about April 7, 2010, Original Lender assigned all "right, title, and  
12 interest, of any kind whatsoever, in and to the subject note(s) and loan documents,"  
13 including the Deed of Trust and the Assignment of L&R to CIBC, Inc. On or about May  
14 6, 2010, an "Assignment of Deed of Trust, Assignment of Leases and Rents and Security  
15 Agreement and Assignment of Assignment of Leases and Rents" (the "CIBC  
16 Assignment") was recorded with the Maricopa County Recorder. A true and correct copy  
17 of the recorded CIBC Assignment is attached hereto as Exhibit E and incorporated herein  
18 by this reference.

19 7. On April 7, 2010, CIBC, Inc. assigned all "right, title, and interest, of any  
20 kind whatsoever, in and to the subject note(s) and loan documents," including the Deed of  
21 Trust and the Assignment of L&R to Bank of America, N.A., as successor in interest to  
22 LaSalle Bank N.A., as trustee for the registered holders of J.P. Morgan Chase Commercial  
23 Mortgage Securities Trust 2007-CIBC19, Commercial Mortgage Pass Through  
24 Certificates, Series 2007CIBC19 ("Trustee Bank of America"). On May 6, 2010, an  
25 "Assignment of Deed of Trust, Assignment of Leases and Rents and Security Agreement"  
26 and an "Assignment of Assignment of Leases and Rents" (collectively, the "Bank of  
27 America Assignment") was recorded with the Maricopa County Recorder. A true and  
28 correct copy of the recorded Bank of America Assignment is attached hereto as Exhibit F

1 and incorporated herein by this reference.

2 8. JPMCC is a subsequent assignee and current holder of the Loan Documents.  
3 True and correct copies of the recorded “Assignment of Deed of Trust, Assignment of  
4 Leases and Rents and Security Agreement and Other Loan Documents” and an  
5 “Assignment of Assignment of Leases and Rents” to JPMCC, are attached hereto as  
6 Exhibit G and incorporated herein by this reference.

7 **Defaults Under the Loan Documents**

8 9. There are several mechanic’s liens that have been filed related to the  
9 Property.

10 10. There are currently several separate lawsuits pending against Debtor in the  
11 Maricopa County Superior Court related to the Property arising from the mechanic’s liens  
12 filed on the Property, and certain cases were filed by tenants of the Property, or their  
13 respective assignee, or various contractors and subcontractors that performed work on the  
14 Property, and relate to the rights and obligations of 94th and Shea under the leases on the  
15 Property.

16 11. Specifically, the following lawsuits have been filed and certain claims are  
17 pending involving the Property; (i) *Hernandez Cos., Inc. v. The Charles Morgan Group*,  
18 CV2008-024259 (the “Hernandez Litigation”); (ii) *Executive Flooring Sys., Inc. v. The*  
19 *Charles Morgan Group*, CV2008-029670 (the “Executive Flooring Litigation”); (iii) *CJS*  
20 *Enterprises LLC v. 94th and Shea, LLC*, CV2008-030931 (the “CJS Litigation”); (iv)  
21 *S&H Steel Co., Inc. v. 94th and Shea, LLC*, CV2009-016231 (the “S&H Litigation”); (v)  
22 *TK Interior Construction Co. v. 94th and Shea, LLC*, CV2009-016423 (the “TK Interior  
23 Litigation”); (vi) *Bluescope Buildings N. Am., Inc. v. Gort Metals Corp., et al.*, CV2009-  
24 025765 (the “Bluescope Litigation”); (vii) *DV Acquisitions LLC v. 94th and Shea, LLC*,  
25 CV2009-026685 (the “DV Litigation”); (viii) *Giant Electric Corp. v. 94th and Shea, LLC*,  
26 CV2009-033525 (the “Giant Electric Litigation”); (ix) *Northwest Floor & Wall Co. v.*  
27 *94th and Shea, LLC*, CV2009-035919 (the “Northwest Floor Litigation”); (x) *S&S Paving*  
28 *& Const., Inc. v. 94th and Shea, LLC*, CV2009-054824 (the “S&S Litigation”); (xi)

1 *Caviness Construction Co. v. 94th and Shea, LLC*, CV2009-036370 (the “Caviness  
2 Litigation”); (xii) *RGN Midwest VII, LLC v. 94th and Shea, LLC*, CV2009-036376 (the  
3 “Regus Litigation”); and (xiii) *Freedom Glass LLC v. 94th and Shea, LLC*, CV2009-  
4 092005 (the “Freedom Glass Litigation”) (collectively, the “Lien Litigation”).

5 12. On or about October 23, 2009, JPMCC provided written notice provided to  
6 94th and Shea that the filing of mechanic’s liens and institution of litigation by said lien  
7 claimants violated the terms of the Deed of Trust and constituted an “Event of Default.”  
8 In addition, on or about October 15, 2010, JPMCC sent written notice to 94th and Shea of  
9 its ongoing monetary default and expressly demanded turnover of all rents from the  
10 Property. True and correct copies of such notices are attached hereto as Exhibit H and  
11 incorporated herein by reference.

12 13. As a result of Debtor’s default and in accordance with its rights under the  
13 terms of the Deed of Trust, in its October 23, 2009 notice, JPMCC accelerated the loan  
14 and Debtor’s secured obligation is presently due and payable.

15 14. Since October 23, 2009, Debtor has failed to pay all amounts due and owing  
16 under the terms of the Loan Documents. Among other payment defaults, Debtor has not  
17 made any payments whatsoever since June 2010.

18 15. Under the Loan Documents, Debtor was obligated to pay taxes associated  
19 with the Property. Debtor has failed and refused to satisfy its tax obligations related to the  
20 Property. As a result of such failures, JPMCC has had to make payments to satisfy the  
21 outstanding tax obligations related to the Property and may be required to make additional  
22 payments in the future.

23 16. As of November 19, 2010, Debtor remains in payment default under the  
24 terms of the Note for its failure to pay principal, late fees, insurance, taxes, and accrued  
25 and accruing interest. Additional fees, costs, and interest continue to accrue under the  
26 terms of the Loan Documents.

27 17. To date, Debtor has failed to turnover any rents or leases to JPMCC related  
28 to the Property.

1           18. To date, Debtor has failed and continues to fail to pay the amounts due and  
2           owing to JPMCC and is otherwise in breach of the terms of the Loan Documents.

3           19. Debtor has executed a lease agreement with 94 Hundred Corporate Center  
4           LLC, which is owned and operated by insiders of the Debtor pertaining to the Property. A  
5           true and correct of such "Lease Agreement" (the "Related Party Lease") attached hereto  
6           as Exhibit I and incorporated herein by reference.

7           20. Pursuant to Sections 1.10(a) and (d) of the Deed of Trust, JPMCC's consent  
8           is required for the Related Party Lease. JPMCC has not provided consent for the Related  
9           Party Lease.

10          21. JPMCC is currently unaware of whether the Related Party Lease is in effect  
11          or whether any party to the Related Party Lease has entered into any agreements with any  
12          third parties as a result thereof.

13          22. Debtor is currently receiving monies from third parties related to Debtor's  
14          possession, use, or control of the Property identified in the Related Party Lease.

15          23. Despite demand, no payment has been made under the Loan Documents and  
16          the outstanding indebtedness remains due and owing and the outstanding defaults under  
17          the Loan Documents have not been cured.

18                   **Post-Default Events and Bankruptcy Filing**

19          24. On November 19, 2010 (the "Petition Date"), Debtor filed its voluntary  
20          petition under Chapter 11 of the Bankruptcy Code.

21          25. Prior to the Petition Date, JPMCC had filed a complaint and application for  
22          the appointment of a receiver in the Maricopa County Superior Court. Based on Debtor's  
23          bankruptcy filing, JPMCC will not seek the appointment of a receiver in the state-court  
24          action while this case is pending.

25          26. JPMCC's basis for seeking the appointment of a receiver was two-fold.  
26          First, several mechanic's liens and lawsuits related to the mechanic's liens have been filed  
27          against the Property. To date, Debtor has failed to remove the mechanic's liens or  
28          otherwise satisfy the liens against the Property. Second, Debtor and/or 94 Hundred

1 Corporate Center LLC continue to operate the Property as a mixed-use commercial,  
2 entertainment, and retail center without any payment to JPMCC of the amounts due under  
3 the Loan Documents. Debtor is either collecting monthly rents from 94 Hundred  
4 Corporate Center and the other tenants or is allowing 94 Hundred Corporate Center to  
5 operate the Property without requiring payment of rent.

6 27. Pursuant to, among other things, the Deed of Trust and the Security  
7 Agreement, JPMCC possesses a valid, perfected, and enforceable first priority security  
8 interest in and to, among other things, the Property and the Collateral.

9 28. In particular, the rents, deposits, profits, damages royalties, and ALL  
10 income related to the Property constitute JPMCC's cash collateral pursuant to 11 U.S.C.  
11 § 363.

12 29. JPMCC HAS NOT consented to Debtor's use of any cash collateral. Nor  
13 has Debtor sought permission from JPMCC to use its cash collateral.

14 30. Debtor has not provided, or offered, adequate protection payments to  
15 JPMCC, and JPMCC's interest in and to the Property and Collateral, including its cash  
16 collateral, is not adequately protected.

17 31. JPMCC hereby formally gives notice that it DOES NOT consent to the use  
18 of any portion of the Collateral that constitutes JPMCC's cash collateral.

19 RESPECTFULLY SUBMITTED this 23rd day of November, 2010.

20 SNELL & WILMER

21  
22 By /s/ Jonathan M. Saffer (#022004)

23 Robert R. Kinas  
24 Jonathan M. Saffer  
25 One South Church Street, Suite 1500  
26 Tucson, AZ 85701-1294  
27 Attorneys for  
28 JPMCC 2007-CIBC19 Shea Boulevard, LLC

1 Copy of the foregoing served electronically or  
2 mailed by United States Postal Service on  
November 23, 2010 to the following:

3 John J. Hebert  
4 Mark W. Roth  
5 Philip R. Rudd  
6 POLSINELLI SHUGHART, P.C.  
7 One East Washington Street, Suite 1200  
8 Phoenix, AZ 85004  
9 jhebert@polsinelli.com  
mroth@polsinelli.com  
prudd@polsinelli.com  
Counsel for Debtor

10 U.S. Trustee  
11 Office of the U.S. Trustee  
12 230 N. First Avenue  
Suite 204  
13 Phoenix, AZ 85003

14 20 Largest Unsecured Creditors  
15 (List attached hereto)

16  
17 s/ Nicole Whitney  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Caviness Construction, Inc.  
12633 North Cave Creek Road  
No. 3  
Phoenix, AZ 85022

Division Nine Contracting, Inc.  
4047 E. Superior Avenue  
Phoenix, AZ 85040-1750

Gallagher & Kennedy PA  
2575 East Camelback Road  
Phoenix, AZ 85016

Levrose Real Estate  
4414 N. Civic Center Plaza  
Suite 100  
Scottsdale, AZ 85251

PHArchitecture  
15849 N. 71<sup>st</sup> Street  
Scottsdale, AZ 85254

S&S Paving  
3401 E. Illini St.  
Phoenix, AZ 85040

Summit Tax Consulting  
10278 E. Hillery Dr.  
Scottsdale, AZ 85255

Cindy Hammond  
Churchill Commercial Capital  
1811 North Tatum Blvd., #3083  
Phoenix, AZ 85028

E Staff  
1803 North Palm Drive  
Tempe, AZ 85281

Hunter Engineering  
10450 N. 74<sup>th</sup> Street  
Suite 200  
Scottsdale, AZ 85258

McCormick Ranch POA, Inc.  
9248 N. 94<sup>th</sup> St.  
Scottsdale, AZ 85258

Randall Cohen, MD  
9325 E. Shea Boulevard  
Bldg. A  
Scottsdale, AZ 85260

Speedy Gonzales Construction  
6802 W. Frier Dr.  
Glendale, AZ 85303-1333

Wye Electric  
1950 W. Rose Garden Lane  
Phoenix, AZ 85027-2748

CJS Enterprises, LLC  
22023 N. 20<sup>th</sup> Ave.  
Suite B  
Phoenix, AZ 85027

Freedom Glass  
3625 E. Atlanta Avenue  
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Phoenix, AZ 85040-2917

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1095 W. Rio Salado Parkway  
Suite 206  
Tempe, AZ 85281

Michael P. Leary  
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Scottsdale, AZ 85255-8906

S&H Steel  
620 West Commerce Avenue  
Gilbert, AZ 85233-4300

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Murray  
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Phoenix, AZ 85004